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EXAMINER

MADSEN, ROBERT A

ART UNIT PAPER NUMBER

1761

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/990,736

Applicant(s)

ALBUJA ET AL

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address.

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date November 3, 2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The Amendment filed February 9, 2004 has been entered. Claim 11 has been cancelled, claims 1-10,12-24 remain pending in the application. It is noted that Claim 13 is marked " (original)", but the examiner understands this to be "currently amended".

### ***Information Disclosure Statement***

2. The information disclosure statement filed November 3, 2003 omitted one reference supplied by applicant (JP 306467 5/21/1997), which was considered by the examiner and included on form 1449. However, the "other documents" included on the 1449 were not considered, and are considered to be included on the 1449 in error.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-10,18-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.
5. Regarding claims 1,18, and 21, "substantially similar horizontal plane to the first pet food" is not described in the specification in such a way to distinguish these recited

containers from the others disclosed in the specification. Applicant's embodiments that that combine a lid that automatically results in the contact of the first and second food and hold the foods in a similar horizontal plane are the embodiments associated with Figure 8. On page 20, lines 8-12 of the specification the position of the wet food is described as "above, or other wise surrounded by the dry pet food" and "disposed underneath or within the dry pet food 140 or alongside the dry pet food" . This is not limited to a "similar horizontal plane". For examination purposes the limitation "substantially similar horizontal plane to the first pet food" is understood to mean the second, or wet food, is within or surrounded by the first, or dry food.

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 1,2,4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davidson et al. (GB 2337976 A) in view of Schommer et al. (US 5887749) and Addy (US 6379727 B1)
8. Regarding claims 1,2,4-8, Davidson et al. teach a single housing (i.e. bowl 1 or 100 in Figures) made of molded polystyrene, a plastic as recited in claim 2, for mixing dry and wet foods. Davidson et al. teach a dry food dispensed within the housing and a wet food in a separate package surrounded by or within the dry food (i.e. wet food package 13 or 600 are located within the single housing) as recited in claim 5, and a releasably sealed lid ( i.e. the lid is sealed via lips 11 and 12 as explained on Page 6

lines 1-30 ), as recited in claim 4, that automatically causes two foods to mix together in the housing when the lid is removed (i.e. as shown in Figure 5(a)) as recited in claim 1, by rupturing the wet food package, as recited in claim 7, at a frangible seal, or tear line as recited in claim 8 ( Page 1, line 5 to Page 2 line 6, Page 6, lines 1-30, Page 7, lines 20-36, Page 8, line 29 to Page 9, line 7, Page 9, line 32-Page 10, line 4).

Davidson et al. teach that the container is a solution to the problem of inconvenient and superfluous packaging normally found in the art where wet and dry foods are packaged in separate containers and mixed in a separate bowl for consumption (Column 1, lines 3-25, Page 9, lines 32-35). Davidson et al. only differ from claims 1,2,5,7,8 in the particular type of food placed in the container , such as dry and wet pet foods as recited in claims 1 and 5, or a semi-dry pet food as recited in claim 6.

9. Schommer et al. are relied on as evidence of a container comprising separately packaged wet and dry pet foods intended to be mixed in a separate location for consumption (Abstract, Column 2, lines 8-20).

10. Addy is relied on as further evidence of the conventionality of adding a separately packaged wet pet food to a base food product, which Addy teaches conventionally include dry or semi-dry pet food, for enhancing the flavor of the base food (Column 1, lines 10-12, 55-63, Column 2, lines 11-31, 50-64).

11. Therefore, it would have been obvious to modify Davidson et al. and include pet food since Davidson et al. teach the container is an improvement over the conventional wet/dry food package wherein wet and dry foods are packaged in separate containers and subsequently mixed in another container and Schommer et al. and Addy teach the

conventionality of packaging dry and wet pet foods separately with the intention of mixing and serving in a separate compartment or container. One would have been substituting one conventional wet/dry food combination for another for the same purpose: providing separately contained wet and dry food that are mixed prior to consumption. It would have been further obvious to modify Davidson et al. to include semi-dry food since Addy teaches dry or semi-dry pet food may be combined with a wet pet food, and one would have been substituting one conventional pet food for another for the same purpose: combining a dry food with a wet food for eating the foods together.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable Davidson et al. (GB 2337976 A) in view of Schommer et al. (US 5887749) and Addy (US 6379727 B1) as applied to claims 1,2,4-8 above, further in view of Kirkland (US 6006945).

13. Davidson et al. are silent in teaching a vending machine package. Kirkland teaches it is desirable to size multi-compartment containers and pet food containers to be dispensed from a vending machine so that such items may be readily available to consumers from conventional vending machines and conventional vending machine locations (Column 1, lines 2-35, Column 2, lines 6-67, Column 5, lines 45 to 65).

Therefore it would have been obvious to further modify Davidson et al. and provide a pre-filled container that has housing sized to fit in a vending machine, since Kirkland teaches it is desirable to provide multi-compartment and pet food containers in vending

machines. One would have been substituting one type of pet food or multi-component housing shape for another.

14. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable Davidson et al. (GB 2337976 A) in view of Schommer et al. (US 5887749) and Addy (US 6379727 B1) as applied to claims 1,2,4-8 above, further in view of Bosshard (US 4836370).

15. Modified Davidson et al. teach a second pet food is held in a package surrounded by or within a first pet food inside a single housing wherein the second food package is attached to the lid and sealed at the opposite end by contacting the lower portion of the housing. The second pet food package is ruptured at this end opposite the lid when the lid is lifted, which results in the mixing of the first and second pet foods. However, Davidson et al. are silent in teaching the lid buckles or the lid pierces the second pet food package in order to rupture the second food package, as recited in claims 9 and 10.

16. Bosshard also teaches a housing comprising a first and second food wherein the second food is in package that is attached to the lid inside and is ruptured at the end opposite the lid when the lid is lifted in order to mix the second food with the first food (Abstract, Column 1, lines 7-31). Bosshard also teaches, like Davidson et al., the second food package be opened by lifting the lid and breaking the seal between the end of the second food package opposite the lid and the lower portion of the housing (i.e. Figure 6, Column 5, lines 22-35) taught by Bosshard). However Bosshard offers

alternatives means of the second package. Bosshard teaches the lid may alternatively puncture the second package as the lid is lifted, as recited in claim 10, wherein the lid buckles and forces a pin to puncture the second package as recited in claim 9 (column 5, line 45-Column 6, line 6). Therefore, it would have been obvious to modify Davidson et al. such that the second food package is punctured as the lid is lifted and buckled as recited in claims 9 and 10, since Bosshard teaches rupturing a second package like the one of Davidson et al. may be done by either breaking the seal between the end of the second food package opposite the lid and the lower portion of the housing as taught by Davidson et al. or puncturing the second package as the lid is lifted and buckled. One would have been substituting one rupturing means for another for the same purpose: providing a housing containing a first and second food, wherein the second food is held in a package within a housing and attached to the lid of the housing and the second food package is ruptured when the lid is opened so that the two foods may be mixed.

17. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable Davidson et al. (GB 2337976 A) in view of Schommer et al. (US 5887749) and Addy (US 6379727 B1) as applied to claims 1,2,4-8 above, further in view of Lilley et al. (WO0135925 A1)

18. Davidson et al. are silent in teaching the second food is a medicated pet food. Lilley et al. teach adding medicated food, which maybe either a wet or dry food and in a separate package, to pet food (Page 3, line 23 to Page 4, line 20, Page 5, lines 14-15). Therefore, it would have been obvious to modify Davidson et al. and include medicated wet food as the wet food portion of the package since one would have been substituting



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one conventional wet food product for another for the same purpose: mixing with a standard pet food product.

19. Claims 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davidson et al. (GB 2337976 A) in view of Schommer et al. (US 5887749) and Addy (US 6379727 B1)

20. Regarding claims 13-17, Davidson et al. teach a bowl for mixing dry and wet foods. Davidson et al. teach the bowl comprises a dry food, a second wet food in a separate package surrounded by or within the dry food, and a lid that automatically causes two foods to mix together in the bowl. The lid is sealed along the rim and has a member that extends from the topside of the lid, as recited in claim 15, opposite the hinge (i.e. a lip portion 11 in Figure 1 or the portion which overhangs the rim opposite hinge 300 in Figure 3, Page 8, line 29-37) for grasping and causing the mixing as recited in claims 13 and 14, the food is for a single feeding as recited in claim 16, the bowl is microwavable as recited in claim 17( Page 1, line 5 to Page 2 line 6, Page 6, lines 1-30, Page 7, lines 20-36, ,Page 9, line 32-Page 10, line 4). Davidson et al. teach that the container is a solution to the problem of inconvenient and superfluous packaging normally found in the art where wet and dry foods are packaged in separate containers and mixed in a separate bowl for consumption (Column 1, lines 3-25, Page 9, lines 32-35). Davidson et al. only differ from claims 13-17 in the particular type of food placed in the container , such as pet foods as recited in claim 13.

21. Schommer et al. are relied on as evidence of a container comprising separately packaged wet and dry pet foods intended to be mixed in a separate location for consumption (Abstract, Column 2, lines 8-20).

22. Addy is relied on as further evidence of the conventionality of adding a separately packaged wet pet food to a base food product, which Addy teaches conventionally include dry or semi-dry pet food, for enhancing the flavor of the base food (Column 1, lines 10-12, 55-63, Column 2, lines 11-31, 50-64).

23. Therefore, it would have been obvious to modify the container of Davidson et al. and include pet food since Davidson et al. teach the container is an improvement over the conventional wet/dry food package wherein wet and dry foods are packaged in separate containers and subsequently mixed in another container and Schommer et al. and Addy teach the conventionality of packaging dry and wet pet foods separately with the intention of mixing and serving in a separate compartment or container. One would have been substituting one conventional wet/dry food combination for another for the same purpose: providing separately contained wet and dry food that are mixed prior to consumption.

24. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) in view of Davidson et al. (GB 2337976 A).

25. Regarding claims 18,19 Schommer et al. teach manufacturing a pet food container comprising providing a single container housing separated first and second pet foods, the second food is a wet pet food that is stored in a packaged included in the

container, the container having a removable lid, and a housing suitable for mixing and serving the two pet foods (Abstract, Column 2, lines 8-20, Column 6, lines 5-19).

However, Schommer et al. are silent in teaching the dry food and wet food package are in a bowl housing such that the wet food is surrounded or within the dry food and the two foods are automatically placed in contact with one another when the lid is opened as recited in claim 18, so that the wet food package is ruptured, as recited in claim 19.

26. Davidson et al. also teaches a single container housing separated dry and wet foods, wherein the wet food is stored within a package, and the dry and wet foods are mixed and consumed from the single container. However, unlike Schommer et al., Davidson et al. teach it is inconvenient to supply a food packages where one must be open the package (i.e. such as the wet food of Schommer et al.) and pour it into another compartment to mix with the dry foods (Page 1, lines 3-25). Davidson et al. overcome this problem of inconvenience by providing a single container (i.e. bowl 1 or 100 with lid in Figures) having a dry food is held within a bowl housing, a wet food held within a separate package surrounded by or within the dry food in the bowl housing (i.e. wet food package 13 or 600 are located within the bowl housing), and a lid that automatically causes the two foods to mix together in the bowl housing when the lid is removed (i.e. as shown in Figure 5(a)) as recited in claim 18, by rupturing the wet food package as recited in claim 19 (Page 1, line 5 to Page 2 line 6, Page 6, lines 1-30, Page 7, lines 20-36, Page 8, line 29 to Page 9, line 7, Page 9, line 32-Page 10, line 4).

27. Therefore it would have been obvious to modify Schommer et al. and include a bowl containing the dry pet food and the wet pet food package wherein the wet pet food

package is automatically opened when the lid to the container is lifted as recited in claims 18 and 19, since Davidson et al. teach this single container is an improvement over the conventional wet/dry food packages that require manually opening the wet food package and pouring it into a compartment for mixing with the dry food. One would have been substituting one conventional wet/dry food container for another for the same purpose: providing a single container with a separately contained wet and dry food, wherein the wet food is in a package that is to be opened so that the wet food and dry food can be mixed prior to consumption.

28. Regarding claim 20, Schommer et al. teach distributing the container via a retail outlets (Column 6, lines 5-19). Although Schommer et al. are silent in teaching the particular type of retail outlet, it would have been obvious to modify Schommer et al. and distribute the container via convenient stores or supermarkets since it was notoriously well known that pet food containers intended for purchase by an individual were available at retail outlets such as convenient stores or supermarkets.

29. Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) in view of Davidson et al. (GB 2337976 A).

30. Regarding claims 21 Schommer et al. teach providing a pet food comprising providing a single container housing separated first and second pet foods, the second food is a wet pet food that is stored in a packaged included in the container, the container having a removable lid, and a housing suitable for mixing and serving the mixture of wet and dry pet foods to a pet, as recited in claims 21 and 24, wherein

opening the container includes unsealing a lid as recited in claim 22, serving does not include a utensil as recited in claim 23, (Abstract, Column 2, lines 8-20, Column 6, lines 5-19). However, Schommer et al. are silent in teaching the dry food and wet food package are in a bowl housing such that the wet food is surrounded or within the dry food and the two foods are automatically placed in contact with one another when the lid is opened as recited in claim 21.

31. Davidson et al. also teaches a single container housing separated dry and wet foods, wherein the wet food is stored within a package, and the dry and wet foods are mixed and consumed from the single container. However, unlike Schommer et al., Davidson et al. teach it is inconvenient to supply a food packages where one must be open the package (i.e. such as the wet food of Schommer et al.) and pour it into another compartment to mix with the dry foods (Page 1, lines 3-25). Davidson et al. overcome this problem of inconvenience by providing a single container (i.e. bowl 1 or 100 with lid in Figures) having a dry food is held within a bowl housing, a wet food held within a separate package surrounded by or within the dry food in the bowl housing (i.e. wet food package 13 or 600 are located within the bowl housing), and a lid that automatically causes the two foods to mix together in the bowl housing when the lid is removed (i.e. as shown in Figure 5(a)) as recited in claim 21 (Page 1, line 5 to Page 2 line 6, Page 6, lines 1-30, Page 7, lines 20-36, Page 8, line 29 to Page 9, line 7, Page 9, line 32-Page 10, line 4).

32. Therefore it would have been obvious to modify Schommer et al. and include a bowl containing the dry pet food and the wet pet food package wherein the wet pet food

package is automatically opened when the lid to the container is lifted as recited in claim 21, since Davidson et al. teach this single container is an improvement over the conventional wet/dry food packages that require manually opening the wet food package and pouring it into a compartment for mixing with the dry food. One would have been substituting one conventional wet/dry food container for another for the same purpose: providing a single container with a separately contained wet and dry food, wherein the wet food is in a package that is to be opened so that the wet food and dry food can be mixed prior to consumption.

### ***Response to Arguments***

33. Applicant's arguments with respect to the rejections of claims 1-24 made in the Office Action mailed November 6, 2003 in light of the amended claim language "substantially similar horizontal plane to the first pet food", which is understood to mean the second, or wet food, is within or surrounded by the first, or dry food, have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, applicant's amendment necessitated the new grounds of rejection presented above.

### ***Conclusion***

34. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

35. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

36. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

37. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

38. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen  
Examiner  
Art Unit 1761



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